

AN
ESSAY
ON THE
HISTORY AND EFFECT
OF THE
CORONATION OATH;
INCLUDING
OBSERVATIONS
ON A
BILL
RECENTLY SUBMITTED TO THE CONSIDERATION OF THE
HOUSE OF COMMONS.

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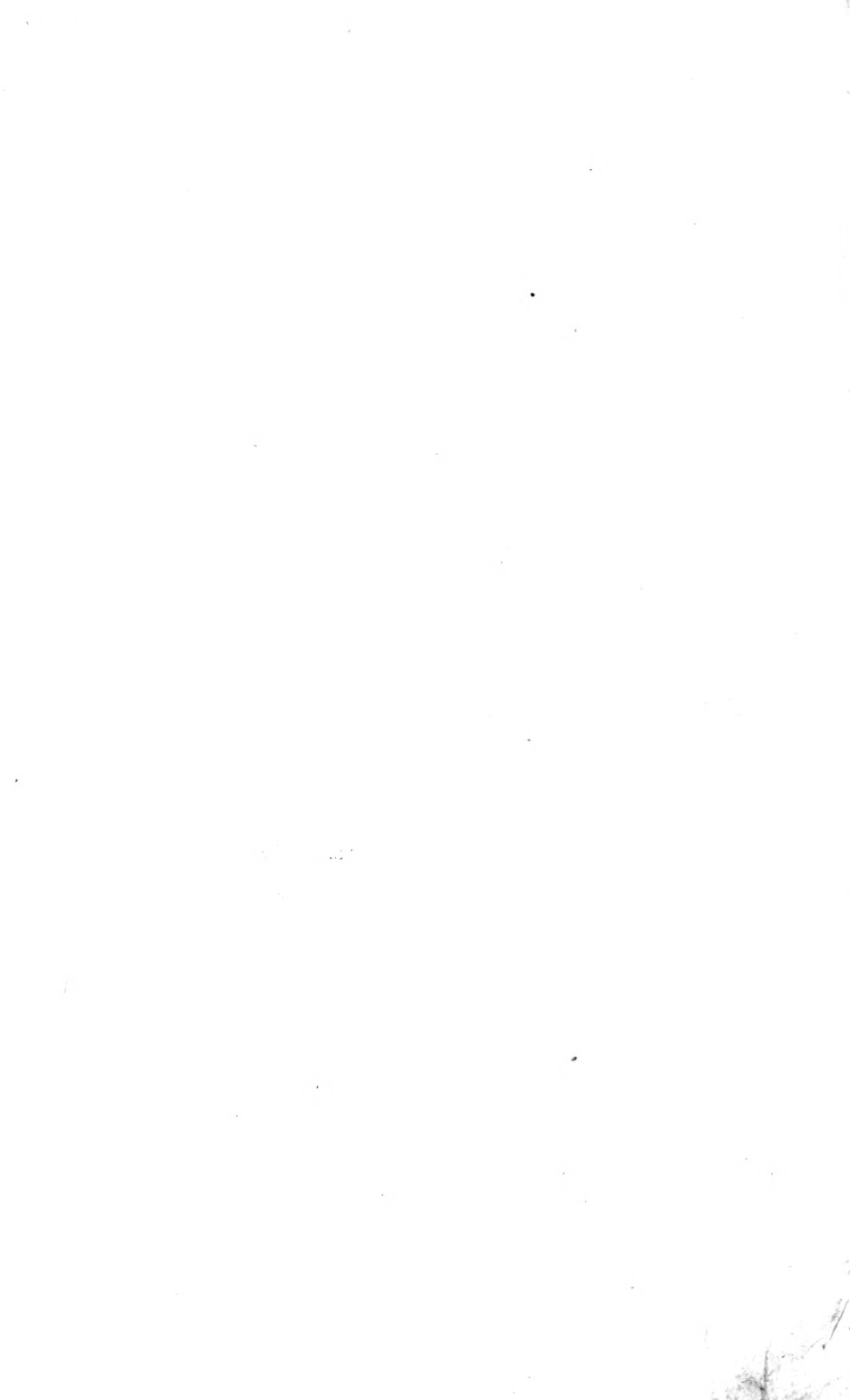
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ADVERTISEMENT.



AS the following pages contain matter principally of legal consideration, the observations which are submitted to the consideration of the public respecting the policy of the measure and the propriety of the bill introduced by Viscount Howick are, for the greater conveniency of general readers, inserted in the appendix.



AN
ESSAY, &c.

THE obligation imposed on the Sovereign by the Coronation Oath having recently occasioned considerable discussion in the daily prints, I apprehend that no apology will be required from any one, who may endeavour to elucidate a subject so essentially connected with the fundamental principles of the British Constitution. It certainly is a matter too important to be lightly considered, or hastily decided, in a way either to confirm existing scruples, or create future difficulties in the free exercise of that legislative authority, with which, in this country, the Sovereign for the wisest purposes is by law invested.

The question indeed seems now seriously to have arisen whether the Coronation Oath preclude the KING, whoever may be the individual Sovereign, from assenting to any further relaxation

of the laws which still remain against the Catholics, and this question requires to be the more profoundly considered, when we reflect upon the present circumstances of the Empire, and more particularly on the predicament of Ireland. That country may fairly be said to be an anomaly in the history of government. Until the Union it had the form, but never the spirit, of the English Constitution; for its principles have been in that country wholly perverted, and its admirable system, which binds both the reason and the passions of Englishmen in the firmest bonds of attachment to their political institutions, has never obtained a footing in the sister Island. It is not, however, my wish to advert to past occurrences, or to the laws of former ages. History is valuable only as far as it is calculated to improve the mind, and enlarge its conceptions; but when the knowledge of it tends necessarily to excite animosity, to preserve a rancorous recollection of antient feuds, to arrest the progress of reason, and keep prejudices alive most injurious to the public welfare, it had better be forgotten, and its records committed to the flames. Such appears to me the history of Ireland, affording from the spirit in which it is generally studied no advantage, from its gloomy pages no entertainment; and one may apply to it the expressions of Tacitus,

in declaring it *opus opimum casibus, atrox præliis, discors seditionibus, ipsa etiam pace sævum.*

With respect to its former laws, among which the statutes against the population of the country are a principal feature, the strongest condemnation has been pronounced even by the Irish legislature, and it has itself formally declared them *injurious to the real welfare and prosperity of Ireland.* In the present moment also, the situation of that country is most singular. While the existence of social order is hourly exposed—amidst nocturnal robbery and midnight assassination, as prevailed in some parts not long since, Ireland advances by most rapid strides in every species of improvement, agricultural and commercial. The wealth of the Catholics who form the great majority of its population, increases with the growing prosperity of the Island, and with their wealth the natural desire of political consequence, and an anxiety to be freed from all restraint, on account of their religious opinions. Their feelings are no longer those of persons who, deprived as they were formerly almost of permission to till their native soil conceived it the greatest boon to be allowed even a civil existence; but of persons contributing in a very great degree to the exigencies, and certainly to the glory of the British Empire. They do the state some service,

and they know it. Can it then be consistent with policy to announce an opinion that the King—at all times—in future ages—under all circumstances—and by whomsoever the royal functions may be administered is sworn, by an unalterable irrevocable oath, to oppose the concession of all further privileges?

The question, however, which has been started respecting the Coronation Oath, on the present occasion, has been applied even to the Bill lately introduced into the House of Commons by Lord Howick*.

* Vide certain letters to Lord Grenville and Viscount Howick, under the signature of a Protestant; a writer of some ingenuity, and who appears to have most extraordinary access to the most confidential documents.

From the uncourteous style, however, in which these letters are composed, they seem fitted

To be the table-talk of clubs up stairs,
To which th' unwash'd artificer repairs
To indulge his genius, after long fatigue,
By diving into Cabinet intrigue!

COWPER.

Admirably calculated also to raise the cry of no Popery, and set the nation in a flame.—*ARCEM jam SABINI habent inde huc armati superatâ valle tendunt—moxet res tum multitudinem tum DUCES. Non pacem, sed civitatem unam ex duabus faciunt—regnum consociant—imperium omne conferunt Romam. Ut Sabinis tamen aliquid daretur*
* * *. I leave the translation of this passage, from Livy,

*The following are the Contents of
that Bill:*

A
BILL

For enabling His Majesty to avail Himself of the Services of all His Liege Subjects, in His Naval and Military Forces, in the Manner therein mentioned.

PREAMBLE.

WHEREAS it is expedient that His Majesty should be enabled to avail Himself of the Services of all His Liege Subjects, in His Naval and Military Forces, for the Maintenance of the Rights of His Crown, and of the Interests, Honour, and Independence of the British Empire;

Be it therefore Enacted by the KING's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it

and also the completion of the sentence in which I have stopped, to the intelligent gentleman who wrote the *first* pamphlet, published on the subject of the Union with Ireland. Let those who are inclined to raise the cry in England of *no Popery*, be wary that they excite not in Ireland that of *no Union*.

shall and may be lawful for His Majesty to grant or confer, or by His Royal Sign Manual to empower the proper Officer or Officers to grant or confer any Military Commission, Warrant, or Appointment whatever, either in His Majesty's Sea or Naval Forces, or in any of His Majesty's Land or Military Forces whatsoever, to or upon any of His Majesty's Liege Subjects, without Exception; and that every such Commission, Warrant, or Appointment, so granted or conferred, shall and may be lawfully exercised by such His Majesty's Subjects, in all Places within or without His Majesty's Dominions, any Law, Statute, or Usage to the contrary notwithstanding; provided that every such Person shall, within

Months after his accepting the said Commission, Warrant, or Appointment, take, make, and subscribe the Declaration and Oath hereinafter mentioned, which Declaration and Oath shall be ingrossed on the Back or at the Foot of the Commission or Appointment so granted or conferred, and shall be there attested by the Signature of the Magistrate or Officer in whose Presence the same shall have been subscribed, and by whom the said Oath shall have been administered.

And be it further Enacted, That such Oath and Declaration may be administered and attested by any Court of Record or Judge of such Court, or by any Justice of Peace or other Magistrate having Power to administer Oaths, in any Part of His Majesty's Dominions; and that if the Party taking and subscribing the same, shall at the Time of his so taking and subscribing the same not be within His Majesty's Dominions, the same may then be administered and attested by any General Officer or Commanding Officer of His Majesty's Land Forces, or by any Admiral or Commanding Officer of His Majesty's Naval Forces: Provided always, That in this last Case the Person holding such Commission, Warrant, or Appointment shall, within

Months after his

Return to any Part of His Majesty's Dominions, again take, make, and subscribe the same Oath and Declaration in Presence of some Court of Record or Magistrate as aforesaid.

And be it further Enacted, That no Person having so taken, made, and subscribed such Oath and Declaration respectively as aforesaid, shall be liable to any Pains, Penalties, or Disabilities whatsoever, for having exercised or acted in or under any such Commission, Warrant, or Appointment, any Law, Statute, or Usage, to the contrary notwithstanding, and although such Person shall not have complied with any of the Directions of any former Statute respecting the Qualifications of Persons holding or exercising Offices within this Realm.

And be it further Enacted, That the said Oath and Declaration, to be so taken, made, and subscribed, shall be in the Words following, videlicet :

“ I *A. B.* being by this Commission appointed to be
 “ [*here set forth the Appointment*] Do hereby solemnly
 “ promise and swear, in the Presence of Almighty God,
 “ That I will be faithful and bear true Allegiance to His
 “ Majesty King George the Third, and that I will do my
 “ utmost to maintain and defend Him against all Treasons
 “ and Traiterous Conspiracies, and against all Attempts
 “ whatever that shall be made against His Person, Crown,
 “ or Dignity ; and that I will, to the utmost of my Power,
 “ resist all such Treasons, Conspiracies, or Attempts,
 “ and will also disclose and make known the same as soon
 “ as they shall come to my Knowledge ; and I do also
 “ promise and swear, in the Presence of Almighty God,
 “ that I will, to the utmost of my Power, maintain and
 “ support the Succession to the Crown of the United
 “ Kingdom of *Great Britain and Ireland*, as the same
 “ now stands limited by Law ; and that I will also, to
 “ the utmost of my Power, maintain and support the Es-
 “ tablished Constitution and Government of the said

“ United Kingdom against all Attempts whatever that
 “ shall be made against the same.”

AND whereas it is expedient that His Majesty's Subjects, however employed in any of His Majesty's Sea or Naval Forces, or any of His Majesty's Land or Military Forces whatsoever, should be allowed the free Exercise of such Religious Opinions as they may respectively profess; BE it Enacted, That no Person employed in His Majesty's Sea or Naval Forces, or Land or Military Forces, and having previously signified in Writing, signed by himself, to his Commanding Officer, his Dissent from the Doctrine or Worship of the Church of *England*, as by Law established, shall, under any Pretence, or by any Means, be prevented from attending, or be subject or liable to any Pains, Penalties, or Disabilities for attending, such Divine Worship or Religious Service as may be consistent with and according to his Religious Persuasion or Opinions, at proper and seasonable Times, and such as shall be consistent with the due and full Discharge of his Naval or Military Duties; nor shall any such Person be compelled or compellable to attend the Worship or Service of the said Established Church; and that any Commissioned Officer acting in Violation of or contrary to this Provision, shall, upon Conviction thereof before a General Court Martial, be liable to be suspended or dismissed from His Majesty's Service, or to such other Punishment, not extending to Life or Limb, as the said Court shall award; and that any Warrant or Non-commissioned Officer so offending, shall be liable to such Punishment, not extending to Life or Limb, as shall be awarded by a General or Regimental Court Martial.

And be it further Enacted, That this Act shall be and continue in force from the _____ in the Year of our Lord _____ until the _____ in the Year of our Lord _____

Such is the Bill which in its consequences has led to the dismissal of an administration, considered to have been as firmly established in the confidence of the Sovereign, as of the country; and their places are now occupied by gentlemen, the number of whose adherents in Parliament was so inconsiderable as to induce them in general, to avoid a division, even upon important questions on which they disagreed from those whom they opposed. The exaltation of a party thus circumstanced to the offices of administration, is certainly as novel in the modern history of Great Britain, as it was wholly unexpected, perhaps even by some of themselves.

It is not, however, my intention to consider the points of difference that have arisen between the Sovereign and the late ministers. The facts, although some of them have been explained, are not sufficiently before the public, to enable them to form an accurate opinion—we have no opportunity of referring to written documents; and after all, the matter appears to my mind too delicate to be made the subject of discussion in a pamphlet.

Neither is it my intention to consider at any great length the expediency of the measure sought to be effected by the Bill which I have quoted, and most erroneously denominated the

Catholic Bill. I shall only observe, that it was contemplated principally, as appears by the declarations of the late ministers in Parliament, in the view of procuring a vast accession of military and naval strength—that it was originally meditated at a most critical conjuncture of continental affairs, and in a moment, when the surest means of composing the ferments which had arisen in the west of Ireland, growing out of a superabundant population, as well as of preventing similar disturbances, appeared to be a facilitation of inducement to the Irish peasantry, to enter into the military service; that it was accelerated by the manifestation of a disposition, on the part of the Irish Catholics, to submit their claims, once more, to the consideration of the Legislature; and by a desire on the part of ministers, in case a due regard to the feelings of His Majesty and the temper of the public mind in Great Britain precluded them from effectually supporting the intended petition in Parliament, to assuage at least their disappointment, by a voluntary amelioration preceding their petition, in a point of importance, both to that class of His Majesty's subjects and to the Empire at large.

That the Catholics of Ireland have contributed in considerable numbers to the completion of our regiments, and the equipment of our fleets, is a fact which cannot be disputed. That it is politic

and expedient to adopt every means by which the resources that Ireland so abundantly affords of encreasing our military strength may be rendered more available, can hardly be a question ; and that the Catholics of Ireland, on account of the restrictions imposed upon promotion, are discouraged from serving as officers, and the common people from enlisting, in consequence of the impediments opposed or apprehended in England to the exercise of their religion, are matters within the knowledge of every one conversant with the state of Ireland. Such are the circumstances under which the late measure was brought forward ; and having stated them, I am inclined to leave the conclusion as to the question of expediency to be drawn by the reader, merely putting him in mind, that such a measure, in point of time, may seem naturally to follow the course adopted during the last Session by the Legislature for the improvement of the army, and for augmenting the number of its regular soldiers.

To those who may be inclined to question the policy of the proposed Bill, I would address myself in the language used by the Athenian orator on a similar occasion*. “ Preserve this Island ;

Σωσαι την νησον. τι εμποδων ; εκ εξεσι ; μησι κακησειν η
 Δια προς τες βελομενος σωζεσθαι και πρασεις ζητειν, δι' ας
 απαντα προησόμενα τα συμφεροντα ;

DEMOSTHENES.

“ what prevents you? *Are ye not pledged by the*
 “ *very laws which you have enacted?* Shall we
 “ continue, in God’s name, to cherish animosities
 “ in a country upon the brink of destruction, and
 “ anxious to be saved? Shall we be busied in
 “ seeking *pretexts* to deprive ourselves of the
 “ greatest advantages, and betray our dearest in-
 “ terests?” Yet such appears to me to be the
 course pursued by those who, in the contempla-
 tion of a future and imaginary evil, would forego
 a present and certain benefit—who are inclined to
 discuss great questions of policy upon the narrow
 maxims of mere positive law—and, like the orator
 who exclaimed, “ Perish commerce!—Live the
 “ constitution!” would let the Empire be over-
 run by an enemy, or moulder into dust, so that
 the Church establishment survived; as if that very
 establishment did not peculiarly depend upon the
 prosperity of the State, and the unanimity of its
 subjects. Would Bonaparte, can any one think,
 be disposed to preserve the privileges of the
 Church; or should he be driven from our shores,
 is it probable that our ruined fundholders would
 be inclined to respect its sacred possessions?
 Does there exist a Statesman who would have
 formed during the last autumn the sanguine ex-
 pectation, or even now venture to cherish the
 pleasing idea, that the predicament of this coun-
 try was not and does not continue such as to re-

quire unparalleled exertion, and, in the language of the proposed Bill, “ to render it *expedient* that
 “ His Majesty should be *enabled* to avail himself of
 “ the services of all his liege subjects in his naval
 “ and military forces, for the maintenance of the
 “ rights of his Crown, and of the interests, honour, and independence of the British Empire?”
 If any such Statesman exist, the number of his adherents and supporters, I apprehend, will not be very considerable, and short will be the dream of his political influence*.

I shall not make any further observation on the expediency of the measure lately proposed. The task is in more able hands, and to them I leave it, as well as the justification of the conduct they have adopted on the occasion. What I propose is, to discuss the question of the Coronation Oath, and by a consideration of the history, nature, and effect of that most solemn obligation, to prove, that it does not impede, in any respect, the exercise of the Royal Prerogative, in assenting to any

* The frequency of disappointment which we have experienced in all the expectations we were induced to form upon the commencement of hostilities with France, has taught us a lesson which we have all learnt. The nation can no longer be made *drunk* with hope, nor will the imputation of jacobinism or disaffection be cast on those who may venture to express apprehensions of continental discomfiture.

Bill proposed by Parliament for the further relief of his Majesty's Catholic subjects.

But, in order to apply the Coronation Oath to the matter which has been lately in dispute, it appears to me advisable, for the purpose of enabling the reader *more fully* to comprehend the question, shortly to describe the original principles of the penal code, against persons professing the Roman Catholic religion and the actual state of the law regarding persons of that religious persuasion.

Principles of Penal Legislation against Catholics.

Sir W. Blackstone has observed, that “ the laws against Papists are rather to be accounted for from their history and the urgency of the times which produced them, than to be approved (upon a cool review) as a standing system of law*. They have all proceeded upon the principle, that the Catholics, in consequence of their religious opinions, have heretofore entertained principles dangerous to the government of this country; and upon this supposed tendency

* Lord Hawkesbury, however, appears to contemplate this code in a different point of view, upon the ground, that these laws are what his lordship denominates *fundamental laws*.

of their faith, the Catholic religion became, in the reign of Queen Elizabeth, proscribed by law. The profession of it was rendered a civil crime, denominated *popish recusancy*, and most of the incapacities enacted against the Catholics, were inflicted in the way of *punishment* upon them as *delinquents* and attached upon conviction of the offence which they committed, in adhering to their religion, or rather in not adopting the change of religion directed by act of Parliament: it being a notion then received, that the state had not merely a right to *prohibit* the *public worship* of an obnoxious religion, but even to *compel* a *change of opinion*, in matter of religious faith.

I have made this observation, as deserving attention on the part of those, who, in modern times, are inclined to draw nice distinctions between toleration and political power, and who refer with such marked deference to what it is fashionable to call the *wisdom of our ancestors*, as evinced in the laws enacted during the 17th century, against the Catholics.

The oaths also taken by adherents to its communion are recognized by the legislature, as satisfactory tests of allegiance to the Sovereign and to the state; and in the language of an Irish act of parliament, those who comply with these tests, are to be considered as *good and loyal subjects to His Majesty*. Upon principle therefore, as de-

duced from a consideration of the law of the land, and the constitution knows no abstract theories on this point, it may be asked, what is the pretence for continuing laws, merely consecutive upon those, which have been at length repealed—inflicting accumulative penalties upon persons, who are now declared innocent of any crime—and enacted for no other purpose, than to give effect to statutes which have ceased to exist.

General State of the Law, in Relation to Catholics in Great Britain.

It is not my intention to enter into a minute detail on this point, and I shall only observe, that the Catholics are, at present, principally affected only by two statutes; the 30th Charles II. Stat. 2. and the 25th Charles II. c. 2.—The former statute regards admission to Parliament, the latter is what is emphatically called, the Test act, and relates to the holding of civil and military offices under the crown, and only within England, Berwick-upon-Tweed, the navy, and Jersey and Guernsey, but not affecting diplomatic appointments or offices exercisable abroad.

The operation, however, of these statutes, is as *distinct* as the nature of their respective provisions. The statute of the 30th Charles II. does

not require conformity to the established Church, *it being no principle of the British Constitution, that those who concur in the enactment of the laws, should profess the religion of the state.* It merely requires, that previously to the discharge of legislative functions the principal points of Catholic faith should be abjured ; and therefore it affects Catholics alone, and no other description of persons dissenting from the Church of England, except quakers, who scruple to take any oath whatever ; even a Jew, born in England, I conceive, would be admissible to sit and vote in Parliament, as the statute does not provide, that the oath shall be administered upon the New Testament. On the other hand the Test act which relates to offices, civil and military, establishes a different test, and requires *conformity to the Church of England*, as a necessary qualification to enable a person to hold his office longer than six months.

Upon the propriety of the sacramental test, I do not wish to say much ; I hope, however, I may be allowed to quote without offence the lines of a great Poet, who certainly has not incurred the charge of indifference to the cause of religion, or partiality to Papists. He exclaims with his usual energy upon this subject—

Hast thou by statute shov'd from its design
 The saviour's feast, his own blest bread and wine?
 And made the symbols of atoning grace
 An *office key*, a *pick-lock* to a place.
 That infidels may prove their title good
 By an oath dipp'd in sacramental blood.
 A blot that will be still a blot in spite
 Of all that grave apologists may write;
 And, though a Bishop, toil to cleanse the stain,
 He wipes and scours the silver cup in vain.

COWPER.—*Expostulation*, Vol. 1.

In mentioning, however, the Test act, candor and consistency require me to state, that individually I have never considered its provisions, as they are now never allowed by the legislature to be enforced to be so grievous as they are generally considered. This statute appears to me as I have expressed myself on another occasion to be now merely a political bugbear, the very mention of which, it is true, alarms the Presbyterian and the Catholic while it appals the Protestant, but whose jaws are muzzled, and whose claws are pared.

In the first place, it does not prevent His Majesty from nominating to offices whomsoever he shall be pleased to appoint. This is clear, from the very words of the statute; and if it were possible that a doubt existed upon the subject it would be cleared away, by reference to a judicial determination in a court of law, where it has

been decided, that although an office be vacated at the expiration of the time allowed by conformity, yet that the party is entitled to recover the fees accrued during that time, as being, until his default, a valid officer. *THURSTON v. SLATFORD*, Lu. 910.

Thus even under the Test act, a Catholic, and a Presbyterian or other dissenter, may be *legally nominated* to an office, and *legally hold it*, during a period of six months. It is true, that in *contemplation of law* the office becomes vacant at the expiration of that time by non-conformity, and that the party continuing afterwards to act is liable to all the severity of the penalties inflicted by this statute; but in consequence of the course annually adopted by the legislature this liability is more nominal than real, as the annual indemnity act suspends the operation of the statute, and reinstates the party legalizing at the same time his intermediate acts.—Speaking therefore as an individual, if Parliament were opened to the Catholics and they were put upon the same footing as other persons dissenting from the established church, I might be inclined to remain satisfied, as a security against molestation, in an office with the implied promise which I conceive to have been given by the legislature, that while the general body of persons differing

from the established church comport themselves in a becoming manner, the Indemnity act shall annually be passed, and the Test act be continued in the book merely *in terrorem*, or as a sort of *bail* for good conduct, and not with any view of vexation. The annual Indemnity act I am disposed to compare in a great measure to the Malt, or even the Mutiny Bill itself, on which alone the existence of the army depends; and yet the circumstance that it is only a temporary act, does not deter persons from abandoning other professions, and venturing their fortunes in a military career. Such are my individual sentiments; at the same time it cannot be pretended, that the Indemnity act extends to all offices, or that the security which it offers is complete, or such as ought to be forced upon a person who is inclined to engage in your cause his fortune and his life. Various accidents might certainly occur to retard the enactment of the Indemnity Bill, before a Catholic officer might be rescued from the fangs of an informer, or the sentence of the law: I can hardly think, even that the gentlemen who intimated an opposition to Lord Howick's Bill would expect persons to engage in the service of the state, while a possibility exists of a prosecution, on account of their zeal to serve the country, and all the penalties of *præmunire* attach upon conviction. They certainly would not consider them-

selves intitled to press such security, as the casualty of the Indemnity Act, in a contract sealed frequently with the blood of the party. Even the right honourable and learned gentleman himself, who intimated an opinion that the Bill was unnecessary if consulted while at the bar by the purchaser or mortgagee of an estate, would have found himself compelled by a sense of professional duty and that high honour by which he is distinguished, to dissuade the acceptance of a doubtful title, and have sanctioned with difficulty any proposal of indemnity. He would, at all events, have left the determination to the feelings of his client, and have justified him in acting according to the impulse of his own judgment. I have made these observations on the Test act, with a view to impress upon Protestants, an idea that this act may be abandoned with less danger than many, from ignorance of its nature and its effect apprehend—and upon Catholics, that the grievance of which they complain is not so serious as they generally imagine. Both parties frequently fall into a very serious error. Many, on both sides, do not advert to the alteration which has been effected by the Catholic Toleration act in England. Previously to its enactment, Catholics were not only affected by the Test act, but liable to various incapacities created by the statutes of recusancy, which rendered them inca-

pable of *taking* any appointment from the crown, and made every patent or commission void *ab initio*. These statutes are repealed by the Catholic Toleration act; but as this is not generally known, even to many lawyers in high situations, an erroneous conception prevails that Catholics *cannot be nominated* to offices, and that they are not upon the same footing in this respect as Protestant Dissenters.

To conclude this head of the present disquisition I shall observe, that even the 30th Charles II. the statute establishing the parliamentary oaths, has been repealed during the present reign, in that part of it which excluded Catholics from appearing at Court, or coming advisedly into the Royal presence; a point which seemed to the framers of the statute as important as exclusion from Parliament; that the Irish Test act is wholly repealed in favour of Irish Protestant Dissenters; and that the Catholic act of 1793 declares and admits the principle, that Catholics may hold all offices with certain exceptions. These circumstances considerably narrow the question respecting the total repeal of this statute*.

Having made these preliminary observations, I now proceed to consider the question respecting the effect of the

* Of the Corporation act I take no notice. In England, the Catholics are not a numerous commercial body.

CORONATION OATH.

This question regarding matter of contract and the exposition of an act of parliament, is clearly a matter of law, and not in any degree matter of divinity; and no British lawyer, I think, will deny that the King, whenever his Majesty shall be convinced of the expediency of any bill recommended by Parliament, is at full liberty to give his royal consent to its enactment. The constitution appears to me to leave the King at liberty to exercise his own discretion in the exercise of his legislative authority, free from the controul of any compact or engagement whatever. It rests secure that the Royal authority will not in this respect be ever abused, in the responsibility of Ministers and in the confidence which it cherishes, that the Sovereign will in general adopt the advice of Parliament, THE GREAT COUNCIL OF THE STATE. At the same time there are cases in which the Sovereign would be bound to exercise the power of the Veto, but that obligation would arise in consequence of a moral duty, independent of any oath. Such would be the case if any bill were submitted by parliament to the King, the provisions of which should be contrary to the law of God: for instance, a bill permitting polygamy, or sanctioning absolute immorality. It is, however,

otherwise, I conceive, in questions relating merely to the political expediency of measures perfectly compatible with the divine law.

Without relying merely on the maxim of the law, which declares the King incapable of doing wrong, the opinion that the royal prerogative of assenting to the enactment of laws proposed by Parliament cannot be restrained rests upon the fundamental principles of social government. It may be considered as a political axiom, *that in every State there necessarily exists a supreme power, capable of ordaining every regulation which it may deem expedient for the public good.* It will also be admitted, that to promote to the utmost the public good is the grand and indispensable duty of all government—*salus reipublicæ suprema lex est.* In discussing the present subject, any investigation of abstract questions as to the original and latent source from whence Government derives its authority would be irrelevant; all will agree that the visible supreme power of the British Empire resides with the King in Parliament, “where,” as Sir W. Blackstone observes, “that absolute despotic power which must in all government reside somewhere, is entrusted by the Constitution of these kingdoms.” Then, as with the King in Parliament is lodged the supreme visible power of the State, and as the supreme power of the State must be capable of

ordaining every regulation expedient for the public good, it necessarily follows, that His Majesty, with the advice and consent of Parliament, is capable of enacting any laws, which he may consider calculated to promote the general happiness of his subjects. Again, as the advancement of the public good is the highest obligation imposed on those who are in any manner invested with supreme power, it also follows that if His Majesty, concurring in opinion with his Parliament, shall consider any measure proposed to him by them to be conducive to the general welfare of his people, he is bound by his solemn and indispensable duty towards God and his subjects to give such a measure his royal assent. It is impossible that any engagement can exist to the contrary—it would be incompatible with the first duty of the King, and destructive of society. Of what force could be that engagement, which should pretend to bind the supreme power of the State in the necessity of continuing laws useless or oppressive, of withholding relief in cases of indisputable justice, and of opposing measures, even proved to be expedient, if not essential to the general happiness of its subjects?

Upon these principles, if after fair discussion a repeal or modification of the remaining laws against the Catholics should appear to be a measure not dangerous, but expedient, calculated,

by establishing religious harmony, to extinguish civil dissensions in an invaluable portion of the Realm—to heal the wounds of Ireland still bleeding—to attach the great majority of the Irish nation in the strongest ties of affection to their connexion with Great Britain—to secure the enjoyment of the great advantages promised by the Union—to consolidate, not in theory but in effect, the interests, and talents, and resources, and strength of the Empire—if, after mature deliberation, these great benefits shall appear to Parliament and to His Majesty as likely to result from admitting the Catholics of Ireland to further privileges; then, upon the principles above stated, there cannot exist an engagement which can restrain His Majesty from assenting to so wise and salutary a law.

The positions which I have endeavoured to establish with respect to the transcendant obligation imposed upon the King to consent to any Bill proposed to him by Parliament (in case His Majesty shall believe such a Bill to be expedient to the public welfare), are confirmed by the positive declarations of the English Legislature. For by the 25th Edward III. Stat. 6. it is expressly declared, “ THAT THE RIGHT OF THE CROWN OF ENG-
 “ LAND AND THE LAW OF THE REALM IS SUCH, that
 “ *upon the mischiefs and damages which happen to*

“ *this Realm the King* OUGHT and IS BOUND BY HIS
 “ OATH, *with the accord of the people in Parliament,*
 “ *thereof to make remedy and law.*” Such has
 been the conception entertained by Parliament
 with respect to the duties of the Sovereign and
 the nature of the oath required at that period.
 There is also a further precedent peculiarly in
 point, and which is *too interesting* not to be
 inserted at length. For it has been suggested
 upon very extraordinary grounds, that the Coro-
 nation Oath was devised by our ancestors at the
 Revolution as a security even against themselves,
 and to preclude the whole nation from changing
 its religion, if so inclined; yet those who have
 advanced this argument have admitted, that the
 making of unalterable laws is an impossibility,
 and Lord Coke lays it down as a maxim and fun-
 damental principle of law, “ that Acts against the
 “ power of Parliaments subsequent bind not.”
 4 Inst. 42. Had such been the intention of our
 ancestors, as suggested, they would have imposed
 the Oath not upon the Sovereign but upon
Members of Parliament; and in adopting such a
 step, they would have followed the precedent I
 am about to cite.

It is to be found in Rot. Parl. 21. Richard II.
 50, 52. The Speaker of the House of Commons
 complains to the King in Parliament that divers
 judgments, statutes, ordinances, &c. had been

reversed and infringed. The King consults the principal Law-Officers as to the means by which the preservation of these laws may be the better secured. They answer, that they are acquainted with no greater authority than the regulations adopted by Parliament. At length the expedient of an oath is devised, and it is taken by the Lords Spiritual and Temporal, and also by the "*Proctors of the Clergy, and Chivalers*" in Parliament, and in the presence of the King. The oath is as follows:

Vous jurez que jammes vous ne pursuerez, ne procurez, ne assenterez, entant comme en vous est, sauuant la régalie du Roy et libertée de sa corône, de reverser, casser, irriter, annuller, ou repeller, ascun des juggemens établissemens, estatuz et ordenances faitez donez ou renduz en c'est présent Parlement.

But the record proceeds to observe:

Et n're Sr. le Roy eue AVISEMENT ET DELIBERATION auesque les PRELATZ et CLERGIE de son roialme, a bien entendu qu'il NE PURRA obliger ses successeurs, Rois d'Angleterre PAR LEUR SEREMENT ne PAR AUTRE VOIE contre la liberté de la corône.*

* A similar proceeding, with respect to imposing oaths on Members of Parliament, (not on the King), binding them to make no alteration in the existing laws, was adopted in the eleventh year of the same reign, as appears by the Rot. Parl

Reciprocal duties are imposed on the Sovereign and on the subject: both are equally bound to the performance of them, whether they be implied and deducible only from the rules of natural law, or expressly declared in formal terms. These reciprocal duties form what has been called by our ancestors the original contract, and the terms of it, with us, are declared in the oath taken by the Kings of the realm at their coronation. The terms of the oath, however, cannot be said to create any *new* duties not incumbent on the Sovereign before his coronation: they only express the nature of obligations previously imposed, and the oath is required merely as a solemn ratification—as a sacred pledge that the royal duties shall be religiously performed. Thus the statute which I have quoted, states the duty of the Sovereign to provide for the remedy of grievances as originally incumbent on him, and proceeds to treat the oath as made merely in confirmation of the pre-existing duty.

From the earliest periods of our history we

of that year; and Prynne has preserved a writ of the King directed to the Sheriffs of the different Counties, directing them to propose the oath to the principal ecclesiastical and lay persons who had not been present in Parliament, and also to Mayors, Bailiffs, and others. A similar course would have been adopted at the Revolution, had it been intended to restrain the legislative power of the State.

find, that the Kings of England at their coronation have formally declared a covenant with their subjects, and solemnly ratified it by an oath. In what are said to be the laws of Edward the Confessor* there is the substance of an oath, which is stated to be sworn by the Sovereign in person, upon the Evangelists, and before all the States of the Realm, previously to this coronation. Among other articles, it is said that the King is to swear,

“ omnes terras & honores, omnes dignitates &
 “ jura, & libertates coronæ regni hujus in inte-
 “ grum, cum omni integritate & sine divisione
 “ observare & defendere; dispersa & dilapidata
 “ & amissa regni jura in pristinum statum &
 “ debitum omnibus viribus revocare—omnia ritè
 “ facere in hoc regno, & *per judicium* procerum
 “ regni—Dei mandata per totum regnum suum
 “ servare, sanctam ecclesiam regni sui, cum
 “ omni integritate & libertate, juxta constitu-
 “ tiones patrum & prædecessorum, servare,
 “ fovere, regere, manu-tenere & contra inimicos
 “ defendere, ita ut Deus præ cæteris honoretur
 “ & præ oculis semper habeatur *bonas leges &
 “ consuetudines approbatas erigere: pravas autem
 “ delere, & omnes a regno deponere—judicium
 “ rectum in regno facere, & justitiam per consi-
 “ lium regni facere.*”

* Lambard.

William the Conqueror is stated to have sworn
 “ to defend holy Church and the rulers of the
 “ same—to govern the people committed to his
 “ care in justice, and with royal providence—to
 “ ordain righteous laws, and keep the same; and
 “ all manner of rapine and wrongful judgments
 “ entirely to interdict, and that they should for
 “ ever after be abolished*.”

Prynne has collected, that Rufus swore “ to
 “ observe justice, equity, and mercy, throughout
 “ the kingdom in every businesse, and defend the
 “ peace and liberty of the Church against all
 “ men, and ease his subjects of all hard taxes†.”

We also find that Richard the first swore “ all
 “ the days of his life to bear peace, honour, and
 “ reverence to God and holy Church, and its mi-
 “ nisters—over the people committed to his
 “ charge to execute right justice and equity—to
 “ abolish bad laws and customs, if any existed,
 “ in his kingdom, and observe good laws‡.”

It is stated that John (*triplici involutus sacra-
 mento*) swore “ to love holy Church and its
 “ ministers, to preserve it harmless from the
 “ attacks of malignant,—to destroy bad laws, and
 “ substitute good laws—and to exercise right
 “ justice, in the kingdom of England§.”

Henry III. also swore in like manner “ to bear

* Roger de Hoveden.

† Sovereign Power, 56.

‡ Mat. Par. p. 28.

§ Mat. Par. p. 166.

“ honour, peace, and reverence to God and holy
 “ Church, and to its ministers all the days of his
 “ life—over the people committed to his care to
 “ exercise right justice—to *destroy bad laws and*
 “ *unjust customs*, if any existed in the kingdom—
 “ to observe those that were good, and to cause
 “ them to be observed by all men*.”

Sir W. Blackstone† has given us the form of a Coronation Oath, from an old and scarce abridgment of the Statutes, published in the reign of Edward IV. Translated from the old French in which it is written, it is to this effect: “ that he
 “ will keep and maintain the rights and franchises
 “ of holy church, granted anciently by the lawful
 “ Christian Kings of England; that he will preserve all the lands, honours, lawful and free
 “ dignities belonging to the crown of the realm
 “ of England, in all manner of entierty, without
 “ any kind of diminution; and the scattered dilapidated or lost rights of the crown, according to
 “ his power, he will bring to their former state;
 “ that he will preserve the peace of holy church,
 “ both to the clergy and to the people of good
 “ will; that he will cause to be executed, in all
 “ his judgments, good and right justice with discretion and mercy; that he will observe the
 “ laws and customs of the realm, and that, according to his power, he will cause to be

* Mat. Par. p. 166.

† 1 Com. 243.

“ observed and enforced, those which the commonalty have made and established; that *he will abolish every where bad laws and customs,* and firm and stable peace among the people committed to his care he will preserve, according to his power, as God may help him.”

This oath is nearly the same as that which I have collected from Lambard; Sir W. Blackstone calls it the “*old coronation oath.*” However, it was clearly obsolete at the time when the book, from which he has cited it, was compiled: for in the Rot. Parl. Henry IV. n. 17. we find what is said to be “*Forma juramenti soliti & consueti præstari per Reges Angliæ in eorum coronatione, quod Archiepiscopus Cantuariensis ab eisdem Regibus exigere & recipere consuevit prout in libris Pontificalium, Archiepiscoporum & Episcoporum plenius continetur. Quod quidem juramentum Ricardus Rex Angliæ post conquestum secundus in coronatione sua præstitit, et ab Archiepiscopo Cant. erat receptum, & illud quidem juramentum Dominus Rex post modum iteravit.*”

Servabis Ecclesiæ Dei, Cleroque, & Populo, pacem ex integro, & concordiam in Deo, secundum vires tuas?

Respondebit, Servabo.

Facies fieri in omnibus judiciis tuis æquam &

rectam justitiam, et discretionem in misericordia
& veritate, secundum vires tuas?

Respondabit, Faciam.

Concedis justas leges & consuetudines esse
tenendas; & promittis per te eas esse protegendas,
& ad honorem Dei corroborandas, quas Vulgus
elegerit, secundum vires tuas?

Respondabit, Concedo & Promitto.

Adjicianturque prædictis Interrogationibus quæ
justa fuerint, prænunciatisque omnibus, confirmet
Rex se omnia servaturum, sacramento super Altare
præstito, coram cunctis,”

Prynne has given us from an old Pontifical,
supposed by him to have been compiled in the
reign of Richard the Second, the form in which
the preceding oath was administered*.

“ Archiepiscopus Cantuar. Regem interrogat, dicens ei si
leges et consuetudines ab antiquis justis & Deo devotis Regi-
bus plebi Anglorum concessas *cum sacramenti firmatione*†,
eidem plebi concedere et servare voluerit, & præsertim leges
consuetudines & libertates a glorioso Regi Edwardo clero
populoque concessas? Dicto Principe se promittente omnia
præmissa facturum & servaturum, tunc exponet ei Archiepis-
copus *articulos* de quibus jurabit, sic dicens,” &c.

* Signal Loyalty, 2. 246.

† This shews that the oath was considered merely as a
confirmation of the obligations held to be previously due from
the Sovereign.

The oath is the same as that which appears in Rot. Par. but at the end is added,

“ Sequitur monitio episcoporum ad Regem, & legatur ab uno.

“ Domine Rex, a vobis perdonari petimus, ut unicuique de nobis & ecclesiis nobis commissis canonicum privilegium ac debitam legem atque justitiam conservetis, et defensionem exhibeatis, sicut Rex in suo regno debet unicuique episcopo et abbatibus et ecclesiis sibi commissis.—Respondebit sic Rex :

“ Animo libenti & devoto promitto vobis & perdono, quia unicuique de vobis & ecclesiis vobis commissis canonicum privilegium & debitam legem & justitiam servabo, & defensionem quantum potero adjuvante Deo exhibebo, sicut Rex unicuique episcopo, abbatibus & ecclesiis sibi commissis quod rectum exhibere debet.”

This form of oath appears to have continued, with very trifling alteration, until the revolution of 1688. It was taken by Edward VI. by James, and Charles I. In the answer of that unfortunate Monarch, to the celebrated remonstrance of the Parliament, the oath taken at his coronation is inserted at length, together with the manner in which it was proposed. It is as follows:

The sermon being done, the Archbishop goeth to the King, and asks his willingness to take the oath usually taken by his predecessors.

The King sheweth himself willing, and goeth to the altar ; the Archbishop administers these questions, and the King answereth them severally :

Episcopus. Sir, will you grant and keep, and by your oath confirm to the people of England, the laws and customs to them granted by the Kings of England, your lawful and religious predecessors ; and namely the laws, customs, and franchises granted to the clergy by the glorious King Saint Edward, your predecessor, according to the laws of God, and true profession of the Gospel established in this kingdom, and agreeable to the prerogative of the Kings thereof, and the ancient customs of this realm ?

Rex. I grant, and promise to keep them.

Epis. Sir, will you keep the peace, and godly agreement entirely, according to your power, both to God, the holy church, the clergy, and the people ?

Rex. I will keep it.

Epis. Sir, will you, to your power, cause law, justice, and discretion, in mercy and truth, to be executed in all your judgments ?

Rex. I will.

Epis. Sir, will you grant to hold, and keep the laws, and rightful customs, which the commonalty of this your kingdom have ; and will you defend and uphold them to the honour of God, so much as in you lieth ?

Rex. I grant, and promise so to do.

Then one of the Bishops reads this admonition to the King, before the people, with a loud voice.

Our Lord and King, we beseech you to pardon, and to grant, and to preserve unto us, and to the churches com-

mitted to our charge, all canonical privileges, and due law, and justice; and that you would protect and defend us, as every good King in his kingdom ought to be protector and defender of the bishops, and churches under their government.

The King answereth :

With a willing and devout heart I promise, and grant my pardon; and that I will preserve and maintain to you, and the churches committed to your charge, all canonical privileges, and due law and justice; and that I will be your protector and defender, to my power, by the assistance of God, as every good King in his kingdom in right ought to protect and defend the bishops, and the churches under their government.

Then the king ariseth, and is led to the communion table: where he makes a solemn oath in sight of all the people, to observe the premises; and, laying his hand upon the book, sayeth :

THE OATH.

The things which I before promised, I shall perform, and keep: so help me God, and the contents of this book.

These were the oaths taken at various times by the Sovereigns of England from the earliest periods of our history, till the accession of William and Mary; and they were never considered to restrain the right of the King to enact any laws proposed by Parliament. On the contrary, we find the succession of the crown repeatedly new modelled, and even the national religion altered by law in its discipline, its worship, and its faith.

Extraordinary revolutions were effected;—new restraints were imposed on the liberties of the subject;—the ancient laws and usages of Parliament were infringed, particularly in the exclusion of the Catholic Peers from the exercise of their legislative functions: and yet it never was surmised that these measures, adopted by the Sovereign with the advice and consent of the three estates of the realm, were in violation of the oath taken at the coronation. If at any period arguments have been drawn from the Coronation Oath as operating on the *legislative* authority of the King, they have tended to *extend* and not to restrain his right of enacting, with the advice and consent of Parliament, new regulations expedient for the public welfare. We have already seen the manner in which the legislative duties of the King have been solemnly declared in Parliament; and that our ancestors considered the Coronation Oath as confirming, and not restraining what the statute declares the “*right*” of the crown, to provide, with the consent of Parliament, for the exigencies of the state. In the earlier oaths we find the King sworn to ordain and introduce wholesome laws, and abolish those which were inconvenient or unjust. In later times, when the constitution of Parliament was firmly established, and the regal prerogative in the enactment of laws ascertained and accurately defined, the clauses of the old Coronation Oath, relating to the legis-

lative duties of the Sovereign, were expunged as unnecessary. It was then considered, that as the right of the people to concur in the enactment of laws was secured, it was only by the bad administration of them that the liberties of the subject could be invaded. Accordingly the terms of the Coronation Oath, from the reign of Richard II. to the revolution, obviously affected the Sovereign solely in his executive capacity.

Previously therefore to the accession of William and Mary, it is obvious that the Coronation Oath opposed no bar to *any relief of the Catholics* by Parliament: the same authority which was able to deprive was competent to restore. It remains then to be examined, whether the alteration made in the Coronation Oath at the revolution varies the case. It may be proper, however, to observe, that the Catholics of *Ireland* were excluded from Parliament by an *English* statute, passed *subsequently* to the change in the language of the Coronation Oath, and the introduction of the Test act was also subsequent. Although this circumstance might obviate all objections attempted to be drawn from the present Coronation Oath, with respect to Irish Catholics, it is not my intention to rely solely upon that argument. I shall investigate the nature and contents of the oath in its modern form; and I shall endeavour to demonstrate, that it contains no

engagement whatever, obliging His Majesty to withhold his assent to a Bill proposed by Parliament for the repeal or modification of the laws against the Catholics, if, exercising a free unbiased judgment upon the circumstances of the case, he shall coincide in opinion with his Parliament that such a measure is expedient.

The 1st W. and M. c. 6. entitled, "An Act for establishing *the* Coronation Oath," states, that "whereas, *by the law and ancient usage* of this "realm, the Kings and Queens thereof have "taken a solemn oath upon the Evangelists, "at their respective coronations, to *maintain the* "statutes, laws, and customs of the said realm, "and all the people and inhabitants thereof, in "their spiritual and civil rights and properties; "but, for as much as the oath *itself*, on such "occasions administered, hath heretofore been "framed in *doubtful words and expressions*, with "relation to ancient laws and constitutions, at "this time unknown: to the end, therefore, that "one uniform oath may be, in all times to come, "taken by the Kings and Queens of this realm, "and to them respectively administered at the "times of their and every of their coronation, it "is enacted, that the oath herein mentioned, and "hereafter expressed, shall and may be administered to their most Excellent Majesties King "William and Queen Mary, at the time of their

“ coronation, in the presence of all persons that
 “ should be then and there present at the so-
 “ lemnizing thereof, by the Archbishop of Can-
 “ terbury or the Archbishop of York, or either
 “ of them, or any other Bishop of this realm,
 “ whom the King’s Majesty shall thereunto ap-
 “ point, and shall be hereby thereunto respect-
 “ ively authorised; which oath followeth, and
 “ shall be administered in this manner, that is to
 “ say:

The Archbishop or Bishop shall say :

Will you solemnly promise and swear to govern the people of this kingdom of England, and the dominions thereto belonging, according to the statutes in Parliament agreed on, and the laws and customs of the same ?

The King and Queen shall say,

I solemnly promise so to do.

Archbishop or Bishop. Will you to your power cause law and justice in mercy to be executed in all your judgments ?

King and Queen. I will.

Archbishop or Bishop. Will you to the utmost of your power maintain the laws of God, the true profession of the Gospel, and the Protestant reformed religion established by law ? And will you preserve unto the Bishops and Clergy of this Realm, and to the churches committed to their charge, all such rights and privileges as by law do or shall appertain unto them or any of them ?

King and Queen. All this I promise to do.

After this the King and Queen, laying his and her hand upon the holy gospel, shall say,

King and Queen. The things which I have here before promised I will perform and keep: so help me God.

Then the King and Queen shall kiss the book.

Such is the present Coronation Oath, and the question that arises upon it is one which relates to the exposition of an act of parliament, and to be decided by the same rules usually adopted in the construction of statutes. Let the preamble be considered, which Lord Coke states to be a “ good
 “ meane to find out the meaning of the statute,
 “ and as it were a key to open the understanding
 “ thereof.” c. 4. 79 a. It refers to “ *the law and ancient usage of the realm,*” and it states the effect of the oath taken at the coronation to be
 “ to maintain the statutes, laws, and customs of
 “ the said realm, and all the people and inhabi-
 “ tants thereof, in their spiritual and civil rights
 “ and properties.” It further states the very object of the act (which was to establish *The Coronation Oath*), and the words are, “ but forasmuch as the
 “ oath itself, on such occasions administered,
 “ hath heretofore been framed in *doubtful words*
 “ and expressions with relation to *ancient laws and*
 “ *constitutions*, at this time unknown, to the end
 “ therefore that *one uniform* oath may in all times
 “ to come be, &c.” We are therefore enabled ever by the act itself, to ascertain the view in which it

was enacted, and thence we are enabled to ascertain that it was not in the contemplation of the legislature to extend the operation of the existing oath—not to bind the King in his legislative capacity—and by the history of the act it will most clearly appear not to prevent the King from assenting to laws repealing the disabilities imposed upon persons dissenting from the established Church.

The present Coronation Oath, it is true, was established at the Revolution, and I will admit that it passed under very strong impressions created by the improper conduct of James II. I will join with any person in condemning the conduct of that Sovereign. I will admit that he endeavoured to subvert the Protestant religion, and that he violated the laws and liberties of the kingdom. To the race of Stuarts I have never felt considerable attachment. Under that line of Sovereigns were passed the most severe laws against the Catholics, and they never knew how to reward the attachment of their friends. But I deny that the conduct of James II. furnished any ground, in the contemplation of our ancestors, for affecting by the new oath the legislative freedom of the Sovereign. Did the mischief of which they had to complain proceed from an undue exercise of the *legislative* authority? The answer will be

best given by the declaration “ of the Lords
 “ Spiritual and Temporal and Commons assembled
 “ at Westminster, *lawfully and freely representing*
 “ *the three estates of the people of this realm*, on the
 “ 13th day of February, 1688,” emphatically
 called the Bill of Rights, and recited in Stat. 2.
 W. and M. st. 2, c. 2. entitled “ an act for delar-
 “ ing the rights and liberties of the subject, and
 “ settling the succession of the Crown.” It states
 as follows :

“ Whereas the late King James the Second, by the assist-
 ance of divers evil Counsellors, Judges, and Ministers em-
 ployed by him, did endeavour to subvert and extirpate the
 Protestant religion, and the laws and liberties of this King-
 dom :

1. By *assuming* and *exercising* a power of *dispensing with*,
 and *suspending* of laws, and the *execution of laws*, without
 consent of Parliament.

2. By committing and prosecuting divers worthy Prelates,
 for humbly petitioning to be excused from concurring with
 the said assumed power.

3. By *issuing* and causing to be *executed* a commission
 under the Great Seal, for erecting a Court called, “ The
 Court of Commissioners for ecclesiastical causes.”

4. By levying money for and to the use of the Crown, by
 pretence of prerogative, for other time and in other manner
 than the same was granted by Parliament.

5. By raising and keeping a standing army within this
 kingdom, in the time of peace, without consent of Parlia-
 ment; and quartering soldiers contrary to law.

6. By causing several good subjects, being Protestants, to

be disarmed, at the same time when Papists were both armed and employed contrary to law*.

7. By violating the freedom of election of members to serve in Parliament.

8. By prosecutions in the Court of King's-Bench for matters and causes cognizable only in Parliament; and by divers other arbitrary and illegal courses, &c. &c. &c.

We have here a formal recognition "from the " three estates of the realm," that it was solely by the *executive* department of the royal authority the Church had been endangered. In passing therefore the 1st W. and M. c. 6. our ancestors could have in view only the dangers from which they had escaped; and as those dangers proceeded solely from the executive department of the royal authority it is to be inferred, even if it were not proved by the history of the debates on the bill, that in new-modelling the language of the Coronation Oath they did not mean to extend its operation. Their sole endeavour was to render the clause which concerned religion more precise, and to provide more effectually against excesses,

* At this time the statutes of recusancy were in force. This clause in the Bill of Rights requires some explanation. The grievance complained against was not so much that Papists were armed and employed, as that Protestants were disarmed. This may be collected from the circumstance that the corresponding article in the *declaratory* part of the Bill of Rights, without taking any notice of Papists, states "that the subjects which are Protestants may " have arms for their defence, suitable to their condition, and as allowed " by law."

similar to those which they had recently experienced, in the conduct of future sovereigns. As no attempts to subvert the established religion either had or could have been made by James II. in his *legislative* capacity, it was unnecessary to have thrown new shackles on that branch of the royal authority, which had been so accurately and lately defined in the Bill of Rights. This reasoning, I think, cannot easily be controverted.

We may therefore apply to this oath the same observations made with respect to that taken previously to the revolution. The parliamentary rights of the subjects being secured—it being established that the two Houses of Parliament alone had the right of proposing and modelling Bills,—and that the King could only simply grant or refuse his royal sanction, there could exist no necessity for imposing further restraints upon the legislative authority of the Sovereign. The only evils to be apprehended were that the forms of the Constitution might be violated, and the laws transgressed or improperly administered by the Executive Government. To guard therefore against such evils, and to bind the Sovereign more effectually to discharge his indispensable duties, an engagement is required upon oath that he shall observe the forms of the Constitution—govern according to law—administer justice to his people

—and preserve in his dominions the laws of morality and the religion of his subjects. To have imposed restraints upon the discretion of the King in his legislative capacity, when parliamentary Bills can *neither be introduced or modelled* by the Sovereign, would have been absurd: to have obliged the King to refuse his assent to any Bill which the three estates of the realm might consider expedient to the welfare of the State, would have been directly contrary to the principle on which the obligation of an oath is exacted.

Various circumstances required an alteration in the language of the Coronation Oath, and, to use the words of the statute, that it should be “*established*.” In fact, all the oaths which existed at the accession of William and Mary were framed in equivocal, and even objectionable terms. The infatuated James had considered himself authorised to commit several illegal acts in consequence of the broad expressions contained in the Oath of Supremacy; and the Coronation Oath itself depended perhaps more on usage, than on any express law. It had even been once altered at the caprice of the Sovereign; for we may observe a difference in the *monitio episcoporum*, as it appears to have been worded in the time of Richard II. and as it existed at the revolution. Upon the destruction of the monasteries, Henry VIII. struck out of the oath with his own hand, as it is said,

what relates to Abbots, and inserted also, I should think, in the introductory part of the oath, “ac-
 “ cording to the laws of God, the true profession
 “ of the Gospel established in this kingdom, and
 “ agreeable to the prerogative of the Kings there-
 “ of, and the ancient customs of the realm.”

Upon these grounds, therefore, the Convention Parliament, assembled in the language of the Bill of Rights, “in order to such an establishment, as
 “ that their religion, laws, and liberties, might
 “ not *again* be in danger of being subverted,” naturally took into consideration the *establishment* of the Coronation Oath. A Committee of the House of Commons having revised the existing oath, on the 25th March make their report, and state that “they have inspected the *former* Coro-
 “ nation Oath, and considered what alterations or
 “ amendments are fit to be made therein.” A Bill is then brought into Parliament for the purpose which was passed, and became Stat. 1. W. & M. c. 6.

In the progress of the Bill however through the Commons, I have to notice a most important circumstance, of a nature to terminate at once all discussion upon the subject. What will the advocates for the construction of the Coronation Oath against which I am contending answer to the fact, that during the discussion of the Bill by which the oath is established, a doubt was suggested how far

the wording of it might not create future difficulty; that a clause was proposed by which it might be obviated; and that it was rejected as unnecessary, because it was conceived there could not exist the possibility of a doubt; that it could ever have been in the contemplation of Parliament to fetter the exercise of legislative authority in the Sovereign, particularly in relieving persons dissenting from the established Church.

It is said that it was proposed to insert in the oath the words “as *shall be* established by law,” and that it was thrown out, because the right of the King to assent to an act for the relief of Dissenters was considered to be sufficiently saved by “*the wording as it stood.*” I have inspected the journals of the house, and cannot discover from them that the amendment in question was ever proposed. I find, however, that on the third reading the following proviso was proposed by way of rider:

“ Provided always, and be it hereby declared,
 “ that no clause in this act shall be understood so
 “ to bind the Kings and Queens of this realm, as
 “ to prevent their giving their royal assent to any
 “ Bill, which shall at any time be offered by the
 “ Lords and Commons assembled in Parliament,
 “ for the taking away or altering any form or
 “ ceremony in the established Church, so as the

“ doctrines of the said Church, a public Liturgy, “ and the episcopal government of it, be pre- “ served.” This proviso on debate was negatived as it should seem without a division; and this circumstance demonstrates in point of history, that the oath was considered to relate solely to the executive department of the royal authority, as any explanation similar to that contained in the proviso was deemed unnecessary;—it appears from *Grey*, that a debate took place the 27th of March in the *Committee* on the subject. The report on this occasion, although extremely confused, clearly evinces that it never was the intention of Parliament to bind the legislative power of the King. The principal debate, however, appears to have arisen on the 29th March, and the following is an extract from some of the speeches:

Sir Christopher Musgrave.—“ There is no occasion for this proviso. It cannot be imagined that any Bill from hence will ever destroy the legislative power.”

Mr. Garroway.—“ The other day you accepted not of an amendment offered, (*meaning, I suppose, the former amendment*) because it was said “ *what was offered was implied.*”

Mr. Finch.—I am against this proviso, when I consider it will not have the effect proposed, but quite the contrary. These words, “ established by law,” hinder not the King from passing any Bill in case of Dissenters. This proviso makes the scruple, and gives the occasion for it.”

Sir Robert Sawyer.—“ This is the first proviso of this

nature that ever was in any Bill: *it seems to strike at the legislative power.* The King has both divines and lawyers about him who will clear the scruple. It will create such a doubt; therefore, whatever the pretence is, it cannot satisfy the King, only those without doors. Therefore, to show a thing at this time of day to make a question of that consequence, I would lay it aside."

Sir R. Cotton, of Cambridgeshire.—"Though the proviso looks well and healing, yet it seems to imply a defect, not able to alter laws as occasion requires. This, instead of one scruple, raises more; as if you were so bound up to the ecclesiastical government, that you cannot make any new laws without such a proviso."

Sir Joseph Tredenham.—"I am of opinion that all ease and favour should be shown to tender consciences, consistent with the safety of the nation, but I know not how this proviso will answer all expectations. I cannot imagine any scruple in the King to pass this law. It is granted by all that by "law" is meant what is in the legislative power. When the King sees this proviso in the act, for the Coronation Oath to bind him up without it, will it not make alterations in the Government which may affect all laws?"

After such a citation, it would be intruding too long on the attention of the reader if I were to consume much time in commenting upon the words of the oath itself. I shall therefore briefly observe, it will plainly appear that the Coronation Oath can be construed only to affecting His Majesty in his executive capacity. This is obviously the case with respect to the first and second clauses; for if the first clause were to be consider-

ed as interfering with the legislative capacity, His Majesty would be bound to observe no law enacted since the accession of William and Mary, nor would such a law be of any force. The only clause then which can be supposed to prevent His Majesty from giving his royal assent to a Bill granting further relief to Catholics is that, in which the King promises to maintain to the utmost of his power “the Protestant reformed “ religion established by law*.” Now the obvi-

* Catholics readily acknowledge the King to be the supreme head of the Protestant reformed Church established by law. A few observations upon the Royal supremacy in this respect, may not be wholly irrelevant.

He is declared to be the Supreme Governor of the Realm, *as well in all spiritual things or causes, as temporal*. Such is the language of the old oath of supremacy: this, however, must be properly understood; for although it be true that the King is Supreme Governor of the Realm, his authority is not absolute, but qualified. The King’s *temporal* authority is qualified both as supreme legislator and supreme administrator: in his legislative capacity, by the indispensable concurrence of both Houses of Parliament to the enactment of any law; and in his executive capacity by the necessary intervention of Judges and of Juries in the administration of justice. The King’s *spiritual* authority is equally qualified, and perhaps under greater restrictions. The King cannot *enact* any canons to bind the laity without the consent of Parliament, nor by his sole authority to bind even the Clergy: for they are made by the Clergy in convocation, where the Archbishop presides in regal state. And in the

ous interpretation of this clause is, that the Sovereign in the exercise of his spiritual authority shall

administration of the ecclesiastical law, the King's authority is again qualified, by the intervention of spiritual Judges proceeding according to established rules, and appointed, except *en dernier resort*, not by the King but by the Archbishops and Bishops.

With respect to the ministry of God's word and of the Sacraments, as preaching, baptizing, confirming, consecrating, absolving, ordaining, and the like—this authority which is what the Catholics understand as *spiritual* authority, the Church of England considers to reside not in the King, but in Bishops and Priests lawfully ordained, who conceive that they derive their mission not from His Majesty, but from Christ through his Apostles. Thus the 37th Article of Religion declares, that “ where we attribute to the Queen's Majesty the chief Government, by which title we understand the minds of some slanderous folks to be offended, we give not to our Princes the *ministering* either of God's word or of the Sacraments; the which thing the injunctions also lately set forth by Queen Elizabeth do most plainly testify; but that only prerogative which we see to have been given always to all goodly Princes. that is, that they should rule all estates committed to their charge by God, whether they be ecclesiastical or temporal, and restrain with the civil sword the evil doers.”

Such is the nature of what is called the King's supremacy with respect to the Church of England; and although it be called a *spiritual* supremacy, is certainly of a temporal nature: it is fully admitted by the Catholics. In His Majesty with respect to the Church of England, and I should think with respect also to the Catholic Church within the King's domi-

observe and maintain the canons—reform and prevent abuses in the Church—and preserve unity and integrity in her faith and discipline. As the two first clauses of the oath relate to civil rights, and to the administration of His Majesty's *temporal* authority, so the last clause concerns what are called in the preamble the *spiritual* rights of the subject, and the administration of the *spiritual* authority. It is clearly proved that the former clauses do not interfere with the legislative department of the Sovereignty; and by parity of reason the last clause cannot be said to have a more extensive operation. The expressions “established by law” are inserted merely to describe the particular system of the Protestant reformed religion which the King is to maintain.

nions, since the clergy as well as laity are necessarily subject to the laws of the state.

If Catholics object to the latter part of what is called the oath of supremacy, they cannot be said to deny the supremacy of the King; since the oath inasmuch as it regards spiritual authority is wholly negative, and in no manner affirmative. It requires no acknowledgment that spiritual authority resides in any particular person, or that it even exists; and it obliges no person to declare the supremacy of the King. If then by taking this oath the King's supremacy be not admitted, by objecting to take it surely it is not denied. All civil or temporal authority of the Pope, or any foreign power directly or indirectly within this realm, the Catholics expressly abjure.

They refer to the various statutes which regulate and establish the *doctrine, worship, government, and discipline of the Church**, and not in any manner to the laws subjecting Catholics to disabilities. The “rights and privileges of the Bishops and Clergy, and of the churches committed to their care,” answer the *canonicum privilegium ac debitam legem* of former times.

Such I conceive to be the reasonable and true construction of the clause in the Coronation Oath which regards religion. But let us consider for a moment the dangerous consequences which must result from an opinion, that it can operate upon the legislative authority so as to prevent his Majesty from assenting to an act granting further relief to his Catholic subjects. It is notorious that many grievous disabilities imposed on Catholics have been already repealed: this has been the work of modern times; and posterity will delight in comparing with the severe and bloody laws of the Stuarts, the humane and tolerant spirit dis-

* Upon the Union with Scotland, in order to prevent confusion from the difference of the two Churches, it was enacted by the act of Union, that every future Sovereign of Great Britain should take an oath at his coronation to maintain and preserve the *settlement* of the Presbyterian government, and also the *settlement* of the Church of England as ratified by the Union. The statutes to which the act refers, as forming the settlement, relate solely to ecclesiastical regulations.

played by the magnanimity of the house of Hanover. It must be a peculiar consolation to the personal feelings of the Sovereign, to have repealed laws which had too long disgraced our statute-book, and to have restored to many of the rights enjoyed by their fellow-subjects, the Catholic body. I have no difficulty in declaring an opinion that the recollection of this ought to weigh with the Catholic body in Ireland ; I venture even to express a hope, since the feelings of the Sovereign are now so explicitly declared and generally known upon this subject, that a sentiment of gratitude congenial with the Irish character for favours already experienced, and emanating in a manner not to be forgotten from the personal bounty of his Majesty, will powerfully operate in suspending any proceedings painful to a quarter from whence such kindness was evinced towards them on a memorable occasion. To his Majesty personally they are indebted for the privileges they actually enjoy.

But if the Coronation Oath could prevent his Majesty from granting his assent to any further legislative measure in their favour, it would have opposed the repeal of every other law inflicting disabilities on Dissenters or Catholics, and particularly the statute of 1791, whereby the Catholic religion became in England tolerated, and, as I am authorized in observing, *established* by law. To

have tolerated a religion so long proscribed was surely a much greater exertion of the legislative authority, than it would be to repeal a penalty still inflicted upon those who profess a religion which the law now tolerates. To suppose, therefore, that the Coronation Oath could oppose the repeal of the 30th Charles II. would be to declare the oath violated by every Toleration act passed during a century. If such an hypothesis were true, the oath has been violated by the act of William and Mary granting toleration to Dissenters—by the act facilitating their admission to corporations—by the act repealing in their favour the Test act of Ireland—by the acts of 1780 and 1791 in favour of the Catholics of England—by all the acts in favour of those in Ireland—by the act granting the elective franchise and admitting Irish Catholics to offices—by the act establishing in Ireland a royal Catholic college for the education of Catholic priests: and it is annually infringed in England by the acts of Indemnity, which suspend the provisions of the English Test act. Such would be the fatal consequences inevitably resulting from this false and dangerous supposition.

I have thus endeavoured to prove the absurdity of the objection attempted to be drawn from the Coronation Oath, with respect to the admission of

Catholics to parliament. The objection has been considered with reference to the fundamental principles of all government: the oaths taken by our Sovereigns, from the earliest periods of our history, have been reviewed and compared; the declarations of the legislature, respecting their nature and effect, have been attentively considered; the oath, in its present terms, has been minutely examined;—nothing has been found which can tend to authorise a difficulty; and as the Coronation Oath affects the King solely in his executive capacity, it cannot decide any questions respecting the expediency of enacting any law. I shall therefore conclude with a very *short* argument, which must be admitted as decisive, and preclude the possibility of doubt on the subject. The Coronation Oath, as we have already seen, is the solemn confirmation of a contract between the Sovereign and his subjects, by which the rights of the latter are secured. Of these rights they cannot be deprived without their consent. If, however, the subjects shall relinquish any particular right to which they may be entitled, as far as it is relinquished, the Sovereign is clearly released from his engagement; for there can exist no contract which by the consent of the parties interested may not be dissolved. Let this plain reasoning be applied to the question of restoring Catholics to the right of voting in parliament.

Admitting, for the sake of argument, that the Sovereign is pledged to his subjects, by the engagement contracted at his coronation, to continue the laws still in force against the Catholics; yet if *the three estates of the realm in Parliament assembled* shall present a Bill to his Majesty, praying that the disabilities to which the Catholics are liable may be removed, surely his Majesty may grant his royal sanction since the very form of the Bill expressly states, that the measure is proposed with *the advice and consent* of his subjects; or why should not both houses of parliament, the constitutional organs of the public voice, pass a resolution upon the subject, calculated to remove at any period all scruples in the royal mind upon a point of such importance to the tranquillity and prosperity of the empire.

THE END

APPENDIX.

NOTES.

1. ON THE OBJECTIONS TO THE BILL.

When I consider the arguments which were alledged against this Bill, it appears to me, that those gentlemen who are inclined to dispute the propriety of the measure, are put to the election of abandoning or legalizing the services of the Catholics. Will they unman our fleets and purge regiments of Catholic soldiers? If they decline this step, they will damp the ardor of those whom they wish to employ in the defence of those establishments, upon the destruction of which they conceive the same officers and seamen at the same time bent, by not removing their apprehensions.

I will confidently appeal to members of the house of Commons, whether upon the first intimation of the measure proposed by the Ex-ministers it did not meet with general approbation—whether the general impression of the house were not “that it was a desirable thing, and the measure most “proper;” and whether the speeches of two most respectable gentlemen against the introduction of the Bill were not considered merely as resulting from the marked peculiarity of their sentiments, upon every subject connected with the question of further concession to the Catholics.

Let the objections to the Bill as stated both in Parliament and the daily prints be considered. It has been said first

that it was not desired on the part of the Catholics. Such a position is certainly too general. That it would not have prevented the Catholic petition, and that those who were most forward in pressing that petition, were more anxious for civil than military immunities may be true. But we are distinctly informed by Lord Howick, that the Bill was not brought forward with a view to any compromise, but as a thing proper to be passed by the legislature on principles of policy, of consistency, and of good faith.

Ministers also were warranted in forming their conclusions with respect to the wishes of the Catholics not from the language of individuals, but from the declarations on the records of Parliament of the body at large; in these they loudly and repeatedly complain of the existing laws respecting military and naval service; and it seems difficult to reconcile with reason the idea that a concession as to part of their demands, improving their condition, could not be desirable.

As to the objection advanced on the ground that it established a new principle leading to further concession, it is I think obviated by the peculiar care in which the clauses were worded; and it certainly did not carry the principle of concession further, than it arises upon the existing laws already enacted in favor of the Catholics.

I am still more at a loss to conceive how any objection in *limine* could have been taken to a Bill which professed to secure to the soldier the free exercise of his religion (consistently with attention to his military duties,) on the part of those, who declare themselves the warmest advocates of toleration. It is a *well known fact* that the impediments opposed in England to the practice of the Catholic religion by Catholic soldiers *materially impede in Ireland the recruiting service*. The very dread of such impediments one would think sufficient to induce the legislature to protect Catholic soldiers by an express provision of law.

Besides, is it fair to debar them from the exercise of a religion (which the law tolerates and allows) while they risk their lives in promoting the prosperity of the empire, at least to suffer them to be exposed to be deprived of that most sacred right by the caprice of any bigotted commander?—Shall we not profit, in this respect, from recent occurrences in India?

Such are the principal objections which seem to have been advanced against this measure. With respect to the omission of the restrictions imposed by the Irish act of 1793 it is to be observed, that those restrictions in the Irish act were not originally proposed (as I understood Lord Grenville to state in the house of Lords) from England, but engrafted on the Bill in Ireland. I must further observe, that the restrictions of the Irish act extend not to the *rank* but to the *employment* of the individual *upon the staff*, and not at *all to the navy*. The latter point is clear upon the face of the statute; and as to the first, I am supported by an opinion which I *know to have been given by the Attorney and Solicitor-General of Ireland* previously to the Union upon the question. His Grace the Duke of Portland is also I am sure aware of that fact. Then as to the *policy* of such restrictions—Can that be seriously disputed? By the law of Ireland, and as to Irish Catholics even according to the doctrine of the present Chancellor of the Exchequer (which I do not in any degree dispute) consistently with the law of England, they may be colonels—command regiments—and, as frequently happens in the course of military service, considerable divisions. But I put it to the good sense of the country, whether there can be any well founded objection to allowing persons, who to attain the rank of colonels must have proved themselves men of high honor, of unsullied integrity, of strict principles, to attain the higher rank of a general; whether the conduct of such men could be reasonably suspected in a

higher station ; whether in proportion to their exaltation in military rank, there would not be the greater security for the discharge of their duty to the country, and their adherence to the obligation of a most solemn oath. Whether here would not be more danger of improper conduct in a Catholic subaltern, precluded from the hope of attaining the summit of laudable ambition, and therefore prone to jealousy and disgust ; at all events—whether the propriety of such an extension of privilege went to the principle of the Bill, and were not matter for discussion in a committee.

I have declared that I am not inclined to dispute the operation of the Irish act of 1793 as protecting to a certain extent an Irish Catholic officer from prosecution under the English Test act. The matter however has never been decided and therefore dubious, but is not the mere existence of a doubt on such a subject sufficient ground to authorize the interposition of legislative provisions ? If we were totally independent of all assistance from Ireland—if we could man our fleets and recruit our armies solely with Protestants, a difference of opinion might be entertained, but such is not our situation. What then will be the opinion of Europe when they find that an opposition was raised in Parliament to a measure calculated in its effects, according to the opinion of that distinguished and honorable nobleman Earl Moira, to have raised in a short period 100,000 soldiers for any service that might be required !

2. ON THE CONDUCT OF THE LATE MINISTERS.

With respect to the question how far ministers individually or collectively, ought to retain their places when their opinions are opposed, it surely will be admitted that it is not upon every difference ministers ought to resign their situations ; mutual sacrifices are not only often necessary, but

under many circumstances reflect honor on those by whom they are made ; and this measure not being a matter of compact with the Catholics, but brought forward by ministers, independently of their petition, they were certainly free to abandon it without being liable to the charge of any breach of faith with that body.

With respect to any modification of the Bill on the part of the late ministers, few observations are necessary to demonstrate the inexpediency and perhaps the impracticability of such a proceeding. The measure was proposed to parliament upon a mixed principle of utility in promoting our military interests—of necessity with a view to compose and prevent an extension of the disturbances which had arisen in the western parts of Ireland, by engaging into the service numbers disposed to insurrection at home but calculated to form excellent soldiers when enrolled under the banners of his Majesty—of propriety in removing a glaring inconsistency in the law most injurious in its effects to the good of the service—of personal regard to the Sovereign, in the hope of preventing any rude pressure on his feelings, and of policy in a wish to avert a Catholic petition at a time when such insurmountable obstacles opposed a compliance with their solicitations—to obviate the effects of total disappointment—and to induce on the part of that body a patient forbearance until the period should arrive when it might be possible, with general unanimity, to gratify their wishes.

The Bill as it appears to me could be modified only in two ways ; by the introduction of a restrictive clause, or by a total alteration of the Bill itself and an extension with its clauses of the Irish act of 1793, in every respect restrictive to Great Britain. The proposal of a restrictive clause on the part of government, without any boon or equivalent, would obviously have defeated a main object of the Bill, and an extension of all the provisions of the Irish act to this country

might have encountered considerable objections from many quarters.—It would have been necessary to have admitted Catholics in England to vote at elections—to corporations—to hold, without the possibility of molestation, various civil offices—and to take degrees at both the Universities.—It is not necessary to discuss whether such a proceeding would not be proper and unattended with any convenience ; but the question naturally arises, whether the public mind of Great Britain were prepared for such measure—and whether such an extension of privilege would have obtained approbation where it was most to be desired. In such a case, to have refused the English Catholic in a Bill, containing a restriction of military promotion, that which is actually enjoyed by the Catholic in Ireland would have been unreasonable : to have excluded the Protestant Dissenter would have been unjust. Under such circumstances therefore, if they existed, the late Ministers acted wisely in wholly abandoning the measure they had proposed. A general assimilation in the law of the two countries respecting the Catholics might have produced a salutary effect—but if that could not be accomplished, a wish even of serving merely the Catholics would have urged the dereliction of the proposed measure, when perseverance in procuring it to be adopted could be productive of no utility whatever, and only indispose the public mind against that body by exciting angry discussion and bitter reflections.

For the reasons already given in the preceding tracts I have carefully abstained from making any observations on the difference which arose on the subject of this bill personally between the Sovereign and his late servants. Many I believe will concur with me in thinking, that on so delicate a point all discussion of the facts should have been confined to Parliament, with the latitude of a *note verbale* (to prevent misconception or misrepresentation out of doors) on the

part of those members whose honor had been so seriously attacked in the daily prints, one of which had presumed to present the public with garbled extracts from confidential papers. The permission so graciously granted to two of the late ministers to vindicate their conduct from imputations which such letters as those in the *Morning Post* were calculated to occasion, while it reflects the highest honor on His Majesty, exhibits feelings proceeding from the most noble and exalted sentiment. A greater outrage certainly was never committed upon public decency than the insertion and perversion in a newspaper of a purloined cabinet minute, at a period when the circumstances in which these persons were placed, whose characters it was sought in such a mode to vilify, precluded the possibility of explanation or self-defence. The generosity of the British character revolts at such means of conducting political warfare—to such means I am confident that the present ministers, all of whom I believe, and some of whom I know to be gentlemen of great personal honour and unsullied integrity, are incapable of resorting—and His Majesty has testified in the most marked manner his strong abhorrence of the proceeding, by the personal kindness demonstrated to the late ministers, when receiving back their seals of office he granted them his royal permission to lay before Parliament a fair statement of the facts, in order to counteract the injurious effects which might be produced upon the public mind, by a partial if not forged and garbled extract of a cabinet paper.

One would have thought indeed after all that has passed, after the handsome acknowledgment made by those in the House of Lords, whom His Majesty had also entrusted with a commission on the occasion, that such means would have been abandoned, particularly when the purposes were accomplished for which they were at first devised. But

without apology to the public, the boldness of the writer in the *Morning Post* seems to advance in endeavouring personally to blacken in the most coarse ungentlemanly terms, the character of a nobleman who stands high in the private respect even of his political opponents; and he has not scrupled to put forth what he states to have proceeded from the sacred mouth even of Royalty itself.

“ However painful he (His Majesty) found it to reconcile to his feelings,” says this writer, “ the removal of objections to any proposal which may have the most distant reference to a question, which has already been the subject of such frequent and distressing reflection, he would not under the circumstances in which it is so earnestly pressed, and *adverting particularly to what took place in 1793*, prevent his ministers from submitting for the consideration of his Parliament the propriety of inserting the proposed clause in the Mutiny bill. “ Whilst however the King so far reluctantly concedes, he thinks it necessary to declare that he *cannot go one step further*, and he trusts that this proof of his forbearance will secure him from being at a future period distressed by any further proposal connected with the question.”

Now I will put it to any impartial person whether he would not be inclined to understand this passage as it was comprehended by the late ministers—whether it did not convey a consent, however reluctant, to the clause as proposed to be introduced, and without any restriction, into the Mutiny bill—whether as it does not mention the *act* of 1793 but *what then took place*, it was not to be understood to include *what at that period had obtained* the sanction of his Majesty, namely military promotion *without restriction*. Whether it were not to be construed as importing a consent to accede to all that was intended, as well as actually

enacted at that period—whether the expressions, adverting to what took place in 1793, do not seem introduced merely as a justification of His Majesty, against any supposition that he compromised any feelings which had caused distressing reflection, while he gave the consent most earnestly pressed; and whether the words stating that His Majesty *cannot go one step further*, ought not to be considered more with reference to any *future* proposal of further concession, than as confining the actual concession given solely to the precise limitation of a statute, which is not at all mentioned. To the official documents it is not in my power as in that of the Writer of the Morning Post to refer; but when it is considered that no reluctance was expressed to a dispatch, authorizing a communication to the Catholics by Mr. Elliott that restriction was not intended, blame does not seem imputable to ministers in having understood His Majesty as consenting to the measure in all the extent afterwards proposed. Blame it appears to me impossible to attach in fairness anywhere; even if it were decent to join issue between such parties, and the whole seems to have been a mistake into which the late ministers had fallen, and which any other persons might equally have committed. His Majesty, in following the advice of those who recommended the transmission of this paper, in the expressions regarding the transactions of 1793 must have alluded not to what had been originally proposed but subsequently enacted; and as the consent given by His Majesty appeared the full measure of concession and no mention was made of the particular Statute, ministers on the other hand understood His Majesty to have acceded to all that had been agreed upon originally at that period.

If any persons are inclined to ask why ministers did not

take further steps to ascertain with greater certainty the decision of His Majesty, the answer appears to me obvious. Doubts could not be raised where none were entertained, and from the manner in which the royal consent had been communicated, it was clear that the subject was not a topic pleasing to the ear of the Sovereign. These circumstances must naturally have operated upon the mind of Lord Howick, in the interview mentioned in his speech, who conceived His Majesty to have expressed only reluctance, and not dissent. In ordinary life we frequently speak in terms of regret and dislike even upon matters to which we have consented, without thinking of revoking that to which we have already agreed. His lordship appears thus to have understood His Majesty, and that he did not withdraw in that interview the consent previously given. With this impression his lordship appears to have quitted the closet, and to have been confirmed in it by the silence observed towards the principal minister who followed. The whole was founded in excusable mistake—the fatal error of a fatal day. But whatever may be the inculpations of such a writer as the author of the letter in the Morning Post upon Lord Howick, it will be a proud reflection to that respectable nobleman, to have been acquitted in the most gracious manner by His Majesty of any thing like wilful misconception of his royal pleasure.

On this topic I have perhaps enlarged more than has been necessary; for I believe that whatever political differences may exist between parties in the state, there is but one opinion respecting the honour of this nobleman, and the ability displayed by his lordship during the period in which it fell to him to conduct in the House of Commons the business of Government.

3 ON CERTAIN EXPRESSIONS USED IN THE PRECEDING
ESSAY.

In the preceding tract I have used with respect to the Roman Catholic religion the word *established*—and I have also shortly stated the principles on which the penal laws against the Catholics were originally enacted.—These laws when duly considered will be found materially to clash with the distinctions to which I have alluded as taken by some statesmen of the present day; and the history and provisions of these statutes completely overturn the idea that any of them are to be considered as *fundamental laws of the state*.

The principle on which they all depend, and upon which alone in the opinion of our most able jurists they can be supported has ceased to exist—it has been abandoned even by the legislature itself, and in the most solemn declaration of the imperial code. The Catholic religion is declared by modern Acts of Parliament to be innoxious—its adherents are declared by them *good and loyal subjects, persons who ought to be relieved from disabilities* to which other descriptions of persons are not liable—its worship is allowed and protected, by law it is ESTABLISHED. Such was the epithet used under similar circumstances by that modern luminary of English Jurisprudence Lord Mansfield—The following are his words: “ It has been said that the Toleration act amounts
“ only to an exception from the penalties of certain laws
“ and to nothing more—But this is much too limited, and
“ a conception of the Toleration act which amounts consequently to a deal more than this. *The Toleration act*
“ *renders that which was illegal before now legal.* The
“ Dissenters way of worship is permitted and allowed by
“ this act—it is not only exempted from punishment but
“ rendered innocent and lawful—it is *established*—it is put

“ under the protection, and is not merely under the connivance of the law.”—It would be presumption in me to add a word in confirmation of such high authority, which supports every position I have ever attempted to establish in support of the Catholic claims. For a more particular account of this speech, vide Dr. Furneaux's Letters, page 24.

